

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,

Plaintiff,

v.

J.C. PENNEY CORPORATION, INC.,
AMWAY CORP.,
AVON PRODUCTS, INC.,
BIDZ.COM, INC.,
ETRONICS, INC.,
HSN, INC.,
HSN IMPROVEMENTS, LLC,
CORNERSTONE BRANDS, INC.,
BALLARD DESIGNS, INC.,
GARNET HILL, INC.,
SMITH & NOBLE, LLC,
THE TERRITORY AHEAD, INC.,
QVC, INC.,
SHUTTERFLY, INC.,
VICTORIA'S SECRET STORES BRAND
MANAGEMENT, INC.,
VICTORIA'S SECRET STORES BRAND
MANAGEMENT, LLC,
VISTAPRINT, LTD., and
VISTAPRINT USA, INC.,

Defendants.

Civil Action No.
6:09-CV-274

**DEFENDANT AVON PRODUCTS, INC.'S
ANSWER AND COUNTERCLAIMS**

Defendant and Counterclaim-Plaintiff Avon Products, Inc. ("Avon") hereby sets forth its Answer and Counterclaims to the Complaint for Patent Infringement of Plaintiff and Counterclaim-Defendant Soverain Software, LLC ("Soverain"). Unless specifically admitted,

all allegations in the Complaint are denied. Responding to the individually enumerated paragraphs of the Complaint, Avon states as follows:

1. To the extent Avon is required to respond to any allegations contained in Paragraph 1 of the Complaint, Avon denies them.

INTRODUCTION

2. To the extent Avon is required to respond to any allegations contained in Paragraph 2 of the Complaint, Avon denies them.

PARTIES

3. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies the same.

4. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies the same.

5. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies the same.

6. Avon admits the allegations of Paragraph 6.

7. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies the same.

8. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies the same.

9. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies the same.

10. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies the same.

11. Avon lacks knowledge or information sufficient to form a belief as to the truth

of the allegations in Paragraph 11 and therefore denies the same.

12. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies the same.

13. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies the same.

14. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore denies the same.

15. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies the same.

16. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies the same.

17. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies the same.

18. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies the same.

19. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies the same.

20. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and therefore denies the same.

21. Avon lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and therefore denies the same.

JURISDICTION AND VENUE

22. Avon admits that Sovereign's Complaint alleges a claim for patent infringement under the patent laws of the United States, but denies that the claim has any merit. Avon admits that this Court has subject matter jurisdiction solely by reason of the allegation that this action arises under an Act of Congress relating to patents. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22 and therefore denies the same.

23. Avon admits that it is a non-resident of the State of Texas and that it engages in business in the State of Texas. Avon denies that it has committed infringing acts in the State of Texas. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 and therefore denies the same.

24. Avon admits that venue is proper in this action. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 and therefore denies the same.

PATENTS-IN-SUIT

25. Avon admits that, on its face, the '314 patent bears an issue date of February 3, 1998 and that, on its face, the '314 patent's reexamination certificate bears a issue date of October 9, 2007. Avon denies that the '314 patent was "duly and properly issued by the United States Patent and Trademark Office". Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25 and therefore denies the same.

26. Avon admits that, on its face, the '492 patent bears an issue date of June 1, 1999 and that, on its face, the '492 patent's reexamination certificate bears a issue date of August 7, 2007. Avon denies that the '492 patent was "duly and properly issued by the PTO". Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in

Paragraph 26 and therefore denies the same.

27. Avon admits that, on its face, the '639 patent bears an issue date of September 18, 2007. Avon denies that the '639 patent was "duly and properly issued by the PTO". Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY J.C. PENNEY

28. Avon denies the allegations of Paragraph 28 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 28 and therefore denies the same.

29. Avon denies the allegations of Paragraph 29 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 28 and therefore denies the same.

30. Avon denies the allegations of Paragraph 30 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and therefore denies the same.

31. Avon denies the allegations of Paragraph 31 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 31 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY AMWAY

32. Avon denies the allegations of Paragraph 32 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32 and therefore denies the same.

33. Avon denies the allegations of Paragraph 33 as they relate to Avon. Avon lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 33 and therefore denies the same.

34. Avon denies the allegations of Paragraph 34 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 34 and therefore denies the same.

35. Avon denies the allegations of Paragraph 35 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 35 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY AVON

36. Avon denies the allegations of Paragraph 36.

37. Avon denies the allegations of Paragraph 37.

38. Avon denies the allegations of Paragraph 38.

39. Avon denies the allegations of Paragraph 39.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY BIDZ.COM

40. Avon denies the allegations of Paragraph 40 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40 and therefore denies the same.

41. Avon denies the allegations of Paragraph 41 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 41 and therefore denies the same.

42. Avon denies the allegations of Paragraph 42 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 42 and therefore denies the same.

43. Avon denies the allegations of Paragraph 43 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY ETRONICS

44. Avon denies the allegations of Paragraph 44 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 44 and therefore denies the same.

45. Avon denies the allegations of Paragraph 45 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 45 and therefore denies the same.

46. Avon denies the allegations of Paragraph 46 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 46 and therefore denies the same.

47. Avon denies the allegations of Paragraph 47 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 47 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY HSN

48. Avon denies the allegations of Paragraph 48 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 48 and therefore denies the same.

49. Avon denies the allegations of Paragraph 49 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in

Paragraph 49 and therefore denies the same.

50. Avon denies the allegations of Paragraph 50 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 50 and therefore denies the same.

51. Avon denies the allegations of Paragraph 51 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 51 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY HSN IMPROVEMENTS

52. Avon denies the allegations of Paragraph 52 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 52 and therefore denies the same.

53. Avon denies the allegations of Paragraph 53 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 53 and therefore denies the same.

54. Avon denies the allegations of Paragraph 54 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 54 and therefore denies the same.

55. Avon denies the allegations of Paragraph 55 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 55 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY CORNERSTONE

56. Avon denies the allegations of Paragraph 56 as they relate to Avon. Avon lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 56 and therefore denies the same.

57. Avon denies the allegations of Paragraph 57 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 57 and therefore denies the same.

58. Avon denies the allegations of Paragraph 58 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 58 and therefore denies the same.

59. Avon denies the allegations of Paragraph 59 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 59 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY BALLARD

60. Avon denies the allegations of Paragraph 60 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 60 and therefore denies the same.

61. Avon denies the allegations of Paragraph 61 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 61 and therefore denies the same.

62. Avon denies the allegations of Paragraph 62 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 62 and therefore denies the same.

63. Avon denies the allegations of Paragraph 63 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in

Paragraph 63 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY GARNET HILL

64. Avon denies the allegations of Paragraph 64 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 64 and therefore denies the same.

65. Avon denies the allegations of Paragraph 65 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 65 and therefore denies the same.

66. Avon denies the allegations of Paragraph 66 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 66 and therefore denies the same.

67. Avon denies the allegations of Paragraph 67 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 67 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY S+N

68. Avon denies the allegations of Paragraph 68 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 68 and therefore denies the same.

69. Avon denies the allegations of Paragraph 69 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 69 and therefore denies the same.

70. Avon denies the allegations of Paragraph 70 as they relate to Avon. Avon lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 70 and therefore denies the same.

71. Avon denies the allegations of Paragraph 47 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 71 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY TTA

72. Avon denies the allegations of Paragraph 72 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 72 and therefore denies the same.

73. Avon denies the allegations of Paragraph 73 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 73 and therefore denies the same.

74. Avon denies the allegations of Paragraph 74 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 74 and therefore denies the same.

75. Avon denies the allegations of Paragraph 75 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 75 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY QVC

76. Avon denies the allegations of Paragraph 76 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 76 and therefore denies the same.

77. Avon denies the allegations of Paragraph 77 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 77 and therefore denies the same.

78. Avon denies the allegations of Paragraph 78 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 78 and therefore denies the same.

79. Avon denies the allegations of Paragraph 79 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 79 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY SHUTTERFLY

80. Avon denies the allegations of Paragraph 80 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 80 and therefore denies the same.

81. Avon denies the allegations of Paragraph 81 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 81 and therefore denies the same.

82. Avon denies the allegations of Paragraph 82 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 82 and therefore denies the same.

83. Avon denies the allegations of Paragraph 83 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 83 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY VS STORES

84. Avon denies the allegations of Paragraph 84 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 84 and therefore denies the same.

85. Avon denies the allegations of Paragraph 85 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 85 and therefore denies the same.

86. Avon denies the allegations of Paragraph 86 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 86 and therefore denies the same.

87. Avon denies the allegations of Paragraph 87 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 87 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY VS DIRECT

88. Avon denies the allegations of Paragraph 88 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 88 and therefore denies the same.

89. Avon denies the allegations of Paragraph 89 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 89 and therefore denies the same.

90. Avon denies the allegations of Paragraph 90 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 90 and therefore denies the same.

91. Avon denies the allegations of Paragraph 91 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 91 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY VISTAPRINT

92. Avon denies the allegations of Paragraph 92 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 92 and therefore denies the same.

93. Avon denies the allegations of Paragraph 93 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 93 and therefore denies the same.

94. Avon denies the allegations of Paragraph 94 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 94 and therefore denies the same.

95. Avon denies the allegations of Paragraph 95 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 95 and therefore denies the same.

INFRINGEMENT OF THE PATENTS-IN-SUIT BY VISTAPRINT USA

96. Avon denies the allegations of Paragraph 96 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 96 and therefore denies the same.

97. Avon denies the allegations of Paragraph 97 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in

Paragraph 97 and therefore denies the same.

98. Avon denies the allegations of Paragraph 98 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 98 and therefore denies the same.

99. Avon denies the allegations of Paragraph 99 as they relate to Avon. Avon lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 99 and therefore denies the same.

RELIEF REQUEST

Avon denies that Soverain is entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

Avon asserts the following defenses to the causes of action asserted in Soverain's Complaint for Patent Infringement, undertaking to prove only those defenses on which it bears the burden of proof under the applicable law.

1. Avon has not and does not directly or indirectly infringe any valid and enforceable claim of the '314 patent, the '492 patent or the '639 patent, either literally, or under the doctrine of equivalents.

2. The claims of the '314 patent, the '492 patent or the '639 patent are invalid for failure to meet the requirements of the Patent Act, 35 U.S.C. § 100, *et. seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103 and/or 112.

3. Soverain's Complaint fails to state a claim upon which relief can be granted.

4. Soverain is estopped, by virtue of the prior art and/or the prosecution history of the '314 patent, the '492 patent or the '639 patent from asserting any construction and/or scope of the claims of the '314 patent, the '492 patent or the '639 patent that would cover any products

or methods used by Avon.

5. The claims of the '314 patent, the '492 patent or the '639 patent are unenforceable due to the applicants and or the patent owner's inequitable conduct for failure to disclose relevant, material and or non-duplicative prior art to the United State Patent And Trademark Office ("PTO") during the prosecution of patents-at-issue, and for making other material affirmative misrepresentations and omissions to the PTO, all with the intent to deceive the PTO into allowing the claims of the '314 patent, the '492 patent or the '639 patent to issue.

6. Avon reserves the right to raise any and all affirmative defenses available to it under law and/or equity based on discovery in this matter, and/or Avon's continued factual investigation with respect to Soverain's claims.

COUNTERCLAIMS

1. Defendant and Counterclaim-Plaintiff Avon, Inc. ("Avon") is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York

2. Upon information and belief, Plaintiff and Counterclaim-Defendant Soverain, LLC ("Soverain") is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Chicago, Illinois.

JURISDICTION AND VENUE

3. These counterclaims arise under federal law, and this Court has subject matter jurisdiction over these counterclaims under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the Patent Laws of the United States, 35 U.S.C. § 100 *et. seq.* and 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Plaintiff and Counterclaim-Defendant

Soverain because Soverain brought its claims against Avon in this Court.

5. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b).

COUNT I

Non-Infringement of the '314 Patent (Shopping Cart)

6. Avon incorporates and realleges Counterclaim Paragraphs 1 through 5, as though fully set forth herein.

7. Avon has not infringed and does not directly or indirectly infringe any valid, enforceable claim of the '314 patent, either literally or under the doctrine of equivalents.

8. Avon seeks a declaratory judgment that it has not infringed and does not directly or indirectly infringe any valid, enforceable claim of the '314 patent, either literally or under the doctrine of equivalents.

COUNT II

Invalidity of the '314 Patent (Shopping Cart)

9. Avon incorporates and re-alleges Counterclaim Paragraphs 1 through 8, as though fully set forth herein.

10. The '314 patent, and each claim thereof, is invalid for failing to satisfy one or more of the requirements of the Patent Act, 35 U.S.C. § 100, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

11. Avon therefore seeks a declaratory judgment that each claim of the '314 patent is invalid for failure to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 100, *et seq.*

COUNT III

Non-Infringement of the '492 Patent (Shopping Cart/Smart Statement)

12. Avon incorporates and re-alleges Counterclaim Paragraphs 1 through 11, as though fully set forth herein.

13. Avon has not infringed and does not directly or indirectly infringe any valid, enforceable claim of the '492 patent, either literally or under the doctrine of equivalents.

14. Avon seeks a declaratory judgment that it has not infringed and does not directly or indirectly infringe any valid, enforceable claim of the '492 patent, either literally or under the doctrine of equivalents.

COUNT IV

Invalidity of the '492 Patent (Shopping Cart/Smart Statement)

15. Avon incorporates and re-alleges Counterclaim Paragraphs 1 through 14, as though fully set forth herein.

16. The '492 patent, and each claim thereof, is invalid for failing to satisfy one or more of the requirements of the Patent Act, 35 U.S.C. § 100, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

17. Avon therefore seeks a declaratory judgment that each claim of the '492 patent is invalid for failure to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 100, *et. seq.*

COUNT V

Non-Infringement of the '639 Patent (Session Id)

18. Avon incorporates and re-alleges Counterclaim Paragraphs 1 through 17, as though fully set forth herein.

19. Avon has not infringed and does not directly or indirectly infringe any valid, enforceable claim of the '639 patent, either literally or under the doctrine of equivalents.

20. Avon seeks a declaratory judgment that it has not infringed and does not directly or indirectly infringe any valid, enforceable claim of the '639 patent, either literally or under the doctrine of equivalents.

COUNT VI

Invalidity of the '639 Patent (Session Id)

21. Avon incorporates and re-alleges Counterclaim Paragraphs 1 through 20, as though fully set forth herein.

22. The '639 patent, and each claim thereof, is invalid for failing to satisfy one or more of the requirements of the Patent Act, 35 U.S.C. § 100, *et seq.*, including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

23. Avon therefore seeks a declaratory judgment that each claim of the '639 patent is invalid for failure to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 100, *et. seq.*

PRAYER FOR RELIEF

Avon respectfully requests that this Court enter judgment in its favor and grant the following relief:

- a. An order and judgment declaring that Avon does not infringe any claim of the '314, '492 or '639 patents, either literally, or under the doctrine of equivalents;
- b. An order and judgment declaring that the claims of the '314, '492 or '639 patents are invalid and/or unenforceable;
- c. Dismissal of the Complaint with prejudice; and

d. Any other relief that the Court may deem appropriate and just under the circumstances.

April 27, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP



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*Attorneys For Defendant
Avon Products, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5-(a)(3)(A). All other counsel of record not deemed to have consented to electronic service will or have been served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 27th day of April, 2010.



Mary Olga-Lovett